IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIDNARY ORIGINAL CIVIL JURISIDICTION

CHAMBER SUMMONS NO.101 OF 2004
IN
SUIT NO.1803 OF 1989

Shivkumar Mody .. Plaintiff

Vs.

Jayantilal Prabhashankar Rawal .. Defendant

And

M/s.Maruti Associates .. Respondents

Mr.A.Rathod & Co. for the plaintiff in support of Chamber Summons

Mr.P.Seksharia with Ms.V.Advani i/b Law Charter for respondent to show cause.

CORAM: S.U. KAMDAR, J.

DATE : 29TH MARCH, 2005

P.C. :

1. The present Chamber Summons is taken out for amendment of the plaint on the ground that during the pendency of the suit the third party rights of development in the said property has been created of by the defendant in favour of one Maruti Associates having their address at Maruti Chamber, Plot Nos.49 & 50 near Veera Desai Road, Balaji Telefilm Road, Andheri (West),

Mumbai 400 049. The said defendant is sought to be added as party defendants to the suit and various averments are sought to be added questioning the said transfer of the said rights in favour of the defendants.

2. The learned counsel for the defendants has opposed the Chamber Summons and has drawn my attention to the order passed by the learned Single Judge of this Court in Notice of Motion No.1117 of 2003 on 8.8.2003. It is his contention that under the said orders this court has expressly relieved the defendant from undertaking which was given in clause 1 (iii) of the Order dated 10th July 1991 passed in Appeal No.588 of 1991. The said undertaking interalia provided that the defendant should give notice of the intended sale and/or creation of third party rights and obtain necessary prior permission from this court for the same. According to the learned counsel for the defendant by an order dt.8.8.2003 the court has permitted the defendant no.1 to create third party rights in the said property in favour of proposed defendant no.2. The learned counsel for the proposed defendant no.2 contents that in view of the order

dt.8.8.2003 the present Chamber Summons is not maintainable and the same is liable to be dismissed.

3. The aforesaid contention has no merits Even if the defendant no.1 has created third party rights in the property in favour of defendant no.2 with permission of this court still it cannot be said that the defendant no.2 cannot be added as party defendant to the present proceedings and that the plaintiff is not entitled to seek any relief against defendant no.2. To my mind such a course is not permissible because it would amount to dismissal of the suit without any trial. The additional contention of the proposed defendant no.2 that the rights of the plaintiffs are protected by reserving certain area in proposed construction of the building also cannot be accepted because it is well settled that interim arrangements made in any suit are always subject to the final outcome of the suit. The rights of the parties to the suit of final adjudication cannot be defeated in this manner. Whether the plaintiff succeeds or not in challenging the creation of the said rights in favour of defendant no.2 is the issue which is required to be determined at the final hearing of the suit and not at

the stage of present Chamber Summons. In view thereto, Chamber Summons is made absolute in terms of prayer clause (a). Chamber Summons is granted accordingly.